



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADE MARKS
Washington, D.C. 20230
www.uspto.gov

APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 626,127	07 26 2000	Stephen J Garger	00801,0087,CPUS04	7695

27194 7590 11 29 2001

HOWREY SIMON ARNOLD & WHITE, LLP
BOX 34
301 RAVENSWOOD AVE.
MENLO PARK, CA 94025

EXAMINER

RILEY, JEZIA

ART UNIT	PAPER NUMBER
----------	--------------

1656

DATE MAILED: 11 29 2001

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/626,127

Applicant(s)

GARGER ET AL.

Examiner

Jezia Riley

Art Unit

1656

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 21 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-648)
- 3) ☐ Notice of Informal Patent Application (PTO-152)
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)

Art Unit: 1656

DETAILED ACTION

Response to Remarks

1. Applicants' arguments and amendments, filed on 9/21/01, have been approved and entered. They have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either newly applied or reiterated. They constitute the complete set presently being applied to the instant application.

2. This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821 (a)1 and (a)2. However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825 for the reason(s) set forth below:

On page 26 and 50, for example, amino acid sequences are cited without citing their corresponding SEQ ID NOs thus failing to comply with sequence rules as summarized above.

This is a non-compliance with the sequence rules due to a lack of a submitted computer readable sequence listing.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(1) the invention was described in a patent granted on an application for patent by another filed in the

United States before the invention of the applicant was made,

(2) the invention was described in a publication written by another person and

Art Unit: 1656

4. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Desnick et al. (5,401,650).

Applicants have the argument that the reference as a 102 (e) reference against the claims of the present invention.

The Desnick reference is used in the rejection as a 102(e) and claims priority back to October 24, 1990. The claims of the present do not have written basis description, for all the limitations, in the parent application 07/160,771 filed February 26, 1988, and therefore do not get priority to the 2/26/88 date. Further, applicants state that the Desnick patent does provide any teaching regarding a recombinant expression construct comprising a nucleotide sequence encoding a protein and a promoter that regulates the expression of the nucleotide in a plant cell. This is not convincing because it is disclosed that alternative eukaryotic expression systems which may be used to express the alpha-Gal A enzymes are plant cell systems infected with recombinant virus expression vectors (e.g., cauliflower mosaic virus, CaMV; tobacco mosaic virus, TMV) or transformed with recombinant plasmid expression vectors (e.g., Ti plasmid) containing the alpha-Gal A coding sequence. In cases where plant expression vectors are used, the expression of the alpha-Gal A coding sequence may be driven by any of a number of promoters.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then

Art Unit: 1656


the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jezia Riley whose telephone number is 703-305-6855.

The examiner can normally be reached on 9:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones can be reached on 703-308-1152. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.


JEZIA RILEY
PRIMARY EXAMINER

November 29, 2001